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Role of the federal government in accessing the Petroleum resources in the scheduled state of Assam

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The Indian peninsula is known for its extensive reserves of natural resources, ranging from coal mines and steel plants to hydrocarbon-based resources such as petroleum. The country is also the third-largest consumer of oil in the world, running just after the United States of America and China, as per the Annual Report of 2018-19 released by the Ministry of Petroleum and Natural Gas (“MoPNG”).¹ The state of Assam, one of seven states comprising of the ‘Seven Sisters’ of Northeastern India, is a dominant producer of crude oil in the country. Its elaborate history dates to 1889, when the first oil well was drilled in the vicinity of the Digboi town.² However, despite having a rich fora of petroleum resources and contributing by over 24 percent of the cumulative onshore crude oil production, Assam still lags in offering reasonable access to petroleum-based resources, which hinders the state’s growth altogether.³ This hindrance is brought in because of several factors, regulatory and political. In this article, the author aims to dissect and break down the regulatory measures and statutes affecting petroleum resources and industrial growth in Assam. At the outset, the author has also paid specific attention to Article 371B of the Indian Constitution,⁴ the central government’s role in ascertaining ease-of-access to the resources in question, as well as the conflicts and differences arising between the central and the state governments which contribute to the hindrance in access and

¹ ‘Energizing and Empowering India: Annual Report 2018-19’ (Ministry of Petroleum & Natural Gas) <http://petroleum.nic.in/sites/default/files/AR_2018-19.pdf> accessed 31 October 2021

² ‘Petroleum and Natural Gas: Government of Assam’ (Advantage Assam) <<https://advantageassam.com/assets/front/pdf/Petroleum-&-Natural-Gas.pdf>> accessed 31 October 2021

³*Ibid*

⁴ Constitution of India, 1950, art. 371B

growth. Additionally, for a better understanding of the issue, the author also refers to several contemporary events linked to the petroleum resources in Assam that may have an impending effect, either positive or negative on the state's hydrocarbon exploration. In conclusion, the researcher aims to discover the hurdles and provide necessary suggestions for targeting the same.

Keywords: *petroleum, hydrocarbon, federalism, natural resources.*

INTRODUCTION

Special Category Status (“SCS”) is a designation granted by the central government to states that confront physical and socio-economic challenges such as mountainous terrains, critical international boundaries, economic and infrastructure underdevelopment, and non-viable public spending.⁵ The National Development Council (“NDC”), which is made up of the prime minister, cabinet ministers, chief ministers, and chairs of the planning commission, makes the decision to award special category status.⁶ They also oversee and evaluate the commission's work. The NDC has previously awarded special category status for plan support to certain states that have a variety of characteristics that need particular attention. The purpose of these rules is to preserve the interests and ambitions of some backward regions, to protect tribal people's cultural and economic interests, and to deal with law-and-order issues in certain areas.

By the virtue of provisions enshrined in the Indian constitution, the state of Assam falls into that particular category. Specifically, Article 371B of the Indian constitution provides for the SCS of Assam, and is presented *ad verbatim* as follows:⁷

“371B. Special provision with respect to the State of Assam. *-Notwithstanding anything in this Constitution, the President may, by order made with respect to the State of Assam, provide for the Constitution and functions of a committee of the Legislative Assembly of the State consisting of members of that Assembly elected from the tribal areas specified in [Part I] of*

⁵ ‘What is Special Category Status to states and how is it different from Special Status?’ (*India Today*, 6 August 2019) <<https://www.indiatoday.in/education-today/gk-current-affairs/story/difference-between-special-category-status-and-special-status-india-1577912-2019-08-06>> accessed 31 October 2021

⁶ *Ibid*

⁷ *Ibid*

the table appended to paragraph 20 of the Sixth Schedule and such number of other members of that Assembly as may be specified in the order and for the modifications to be made in the rules of procedure of that Assembly for the constitution and proper functioning of such committee.”

Before delving deeper into the intricacies of the SCS and the abovementioned provision, it is imperative to mention that Article 371B of the Indian Constitution is included in Part XXI, which essentially deals with temporary, transitional, and special provisions.⁸ These provisions acknowledged the fact that India is a union of states, and there are territorial, cultural, and regional differences among the states. It also acknowledged that certain regions are disadvantaged, warranting a special status.

FEDERAL STRUCTURE

Overall, India does have a federal system of government that divides legislative powers between the national and state legislatures. The control and maintenance of oil and gas fields, mineral oil reserves, petroleum, and petroleum products are the responsibility of the Union Government, India's federal legislative body, according to Article 246 of the Indian Constitution.⁹ State and local governments do have the authority to control issues such as property use and accessibility, labor, water, and local governance.¹⁰ As a result, although the Indian government executes the contract for hydrocarbon exploration and production, licenses for executing operations related to drilling and development for onshore blocks must be secured from state governments.¹¹ The Government of India has licensing authority over the offshore blocks. In the author's opinion, for Assam, a special status is imperative for protecting the interests of the state and preventing exploitation from public and private entities alike. The Indian legal system is not untouched by political influence and corruption, which might lead to a biased allotment of tenders and allocation of resources for exploration. The licensing for drilling and development of onshore blocks is a critical aspect that provides for the

⁸ Constitution of India, 1950, art. 371B, Part 11

⁹ Constitution of India, 1950, art. 246

¹⁰ Tanya Jagtiani, 'Local government in India' (*India Development Review*) <<https://idronline.org/idr-explains-local-government-in-india/>> accessed 31 October 2021

¹¹ Oilfields (Regulation and Development) Act, 1948, Schedule 6A

interference of states with respect to activities pertaining specifically to the petroleum sector in the state.

ROLE OF FEDERAL GOVERNMENT

In order to understand the role of the central government and the state government in accessing and tapping the petroleum resources in the state of Assam, it is imperative to understand the legislative and public policy regimes in place to assist the same. It is also pertinent to note that the regulations which apply to Assam, will also apply to other states of India, hence this is a general discussion on statutory and legislative regimes.¹²

Measures in regard to Petroleum and Hydrocarbon Industry in India

India is the world's third-largest energy user, and petroleum & gas, in the form of a resource for energy generation, accounting for 41% of all its total energy usage.¹³ The nation has total recoverable reserves of around 594 million metric tons of petroleum and over 1,233 million cubic meters of natural gas before April 2018.¹⁴ In 2017–18, the country's crude oil output was around 35.68 million metric tons, while its production of natural gas was approximately 32.65 billion cubic meters.¹⁵ With all this volume of production, about 83% of crude oil and 47% of natural gas used in India are procured.¹⁶ The Indian government has the authority to legislate on Oil and Natural Gases per the powers conferred by the Indian Constitution. The federal government is given legislative powers under Entry 53 of List I in Schedule VII of the Constitution.¹⁷ From an industrial standpoint, the oil and gas business is organized into three key segments:¹⁸

¹² 'State governments cannot deny implementation of central laws in Union List: Home Ministry' (DNA, 13 December 2019 <<https://www.dnaindia.com/india/report-state-governments-cannot-deny-implementation-of-central-laws-in-union-list-home-ministry-2805473>> accessed 31 October 2021

¹³ Ministry of Petroleum & Natural Gas (n 1)

¹⁴ *Ibid*

¹⁵ *Ibid*

¹⁶ *Ibid*

¹⁷ Constitution of India, 1950, Schedule 7

¹⁸ Venkatesh R. Prasad, 'In a Nutshell: Oil and Gas Law in India' (*Lexology*, 25 October 2019) <<https://www.lexology.com/library/detail.aspx?g=5f5fb162-3e65-4898-a821-dc90eadea95d>> accessed 31 October 2021

- I. *Upstream* operations include exploration, recovery, and production of oil and gas. In the industry, it is simply referred to as Exploration and Production.
- II. *Midstream* is responsible for the processing, storage, marketing, and transportation of resources such as crude oil, natural gas, natural gas liquids, and sulfur.
- III. *Downstream* pertains to the process of refining crude oil as well as the sale and distribution of crude oil and natural gas-derived goods.

The Indian government has implemented different licensing regimes on a regular basis in order to boost indigenous manufacturing. As a rule of thumb, an acreage issued under a licensing scheme remains controlled by that regime, and any later revised regulation applies to acreages given under that regime. As a result, distinct blocks are now controlled by separate licensing regimes (depending on when they were awarded). The four basic kinds of licensing regimes now in use are explained below in chronological order as per the date till blocks were awarded.

The late 1970s: Regime of nominations: The petroleum exploration license was awarded on a nomination basis to the two national oil firms – Oil and Natural Gas Corporation Limited and Oil India Limited– under such a system.¹⁹

Between 1980 and 1995: The Pre-New Exploration Licensing Policy (“NELP”) period: Private businesses were given 28 exploration blocks. Following discovery, OIL and ONGC were granted the opportunity to partake in the blocks. Currently, ten pre-NELP production sharing contracts (PSCs) are in effect.²⁰ Concerning the Pre-NELP found field or development rounds, petroleum mining lease (PML) was awarded to private firms for the small, medium-sized, and discovered

¹⁹Exploration and Production: Block Awards & Amp; Amp; Status' (Ministry of Petroleum and Natural Gas) <<https://mopng.gov.in/en/exp-and-prod/block-award>> accessed 31 October 2021

²⁰Venkatesh R. Prasad (n 18)

fields (proved reserves discovered by ONGC and OIL). The Indian government has approved contracts for 29 identified fields, totaling 28 contracts. There are 25 live contracts out of these.²¹

Between 1997 and 2010:

The NELP Regime: The NELP went into effect in 1999. Companies (both private and foreign) were allocated blocks via an internationally competitive procurement procedure. The NELP regime was built on the "production sharing paradigm." The suggested percentage of profit to be paid under the agreement was a biddable criterion. Nine licensing rounds resulted in the signing of 254 contracts.²² Sixty-six of these are currently in use. One of the primary problems with the system is that the Indian government has too much control (through the management committee) since the expenditures spent by the contractors must be authorized by the Government of India.²³

Post-2016:

The Hydrocarbon Exploring and Licensing Policy ("HELP") Regime: In order to increase private engagement and international investment, the Indian government implemented the HELP in 2016.

Contrary to the NELP regime, wherein earlier the contractor split earnings with the central government post-recovery of expenses, the HELP regime used a revenue-sharing approach, i.e., the revenue sharing of contractors with the Indian government will still be in place. It is envisaged that this would lessen the central government's monitoring over daily operations

²¹ Exploration and Production: Block Awards & Amp; Amp; Status (n 19)

²² Venkatesh R. Prasad (n 18)

²³ 'New Exploration Licensing Policy (NELP)' (*National Data Repository*, 22 April 2021)

<https://www.ndrdgh.gov.in/NDR/?page_id=589> accessed 31 October 2021

and the delays caused by the Indian government's review of the contractors' expenditures.²⁴ In conjunction with the foregoing, the Government of India established the marginal field policy from the year 2015, particularly with the goal of getting the marginal petroleum resources of national oil corporations into production as soon as possible. It should be mentioned how one of the important changes implemented lately by the Indian government has been the convergence of the licensing framework as it applies to traditional and non-traditional resources. Prior to the implementation of the HELP system, contractors were only able to discover and generate conventional resources of energy, i.e., condensate, crude oil, and natural gas, but not coal bed methane or shale.²⁵

The Government of India developed separate policies for unconventional resources, such as the coal bed methane policy and the policy dated 14 October 2013 giving access for oil and shale gas exploitation and exploration to certain oil-based companies for blocks conferred to these businesses on the premise of a nomination. The contractors will be permitted to develop and expand non-traditional hydrocarbons under a unified license for the block under HELP. Furthermore, in August 2018, the Indian government approved the policy on unconventional hydrocarbons exploration to allow for the exploitation and exploration of non-conventional petroleum products such as shale oil and coal bed methane as well as a gas under pre-existing CBM contracts, PSCs, and nomination fields.²⁶

MEASURES IN REGARD TO PETROLEUM AND HYDROCARBON INDUSTRY IN ASSAM

With respect to Assam, the central government follows the aforementioned policies along with specific statutory regimes, as enumerated below:

- i. The Oilfields (Regulation and Development) Act of 1948: Hereinafter referred to as The Oilfields Act, it is the principal piece of law that governs the upstream gas and oil industry. The Oilfields Act includes sections for licensing as well as

²⁴ New Exploration Licensing Policy (NELP) (n 23)

²⁵ Venkatesh R. Prasad (n 18)

²⁶ *Ibid*

- leasing hydrocarbon blocks. Therefore, in this context, the Oilfields Act grants the Government of India regulation authority over mining leases as well as mineral oil production, as well as royalty rates to be payable by the holder of a mining lease. Although the Centre is authorized to control and manage the oil resources, the state owns the land and natural assets, particularly minerals. As per Schedule 6A of the Oilfields Act, a designated operator must get license and lease papers from the state government in exchange for paying a specified royalty of 12.5 percent to the state. Offshore oilfields, on the other hand, are fully owned by the Centre.²⁷
- ii. The Petroleum and Natural Gas Rules, 1959: Hereinafter referred to as The 'PNG Rules', created under the Oilfields Act, describe the issuance of licenses & leases both for offshore and onshore regions.²⁸
 - iii. The Mines Act, 1952 and Oil Mines Regulations, 2017: These detail the requirements pertaining to the health, safety, and welfare of oil mine employees. The Mines Act also emphasizes the obligations of owners, agents, and managers, as well as the consequences for violating the rules.
 - iv. Petroleum and Natural Gas (Safety in Offshore Operations) Rules, 2008: Hereinafter referred to as the PNG Safety Rules, under the Oilfields Act, establish safety requirements and procedures to be followed for the protection of offshore oil and gas activities.

All of the abovementioned statutes and policies clubbed together, formulate an extensive framework for the federal government to follow and execute with respect to granting access to hydrocarbon resources in the state of Assam.

²⁷ The Oilfields (Regulation and Development) Act, 1948 (n 11)

²⁸ Nishith Desai Associates, 'Oil & Gas Industry in India: Legal, Regulatory and Tax' (*Dokumen*, February 2018) <<https://dokumen.tips/documents/oil-gas-industry-in-india-nishith-desai-associates-oil-gas-industry.html>> accessed 31 October 2021

CONFLICTS BETWEEN CENTRAL AND STATE GOVERNMENT

In order to understand the role of central government and the state government in accessing and tapping the petroleum resources in the state of Assam, it is imperative to understand the extent of federalism, discuss statutes and legislations involved, and shed a light on the contemporary events taking place with respect to the industry and the resources. To understand the implications of federalism, it is pertinent to understand what it actually is.

Federalism

Federalism is a form of administrative and political arrangement, responsible for bringing together different provinces and additional political systems into a greater constitutional structure, and at the same time, conserving their autonomy.²⁹ Federal systems can accomplish the same by insisting that fundamental procedures be created and implemented via a certain kind of dialogue, so that all representatives may take part in formulating and bringing in specific choices.³⁰ Federalism may be defined as the "bringing together" or "keeping together" of component geographic entities. The political view reinforces the fact that federal regimes often emphasize the necessity of diplomacy as well as bargained collaboration among numerous state centers, as well as the advantages of scattered power centers in safeguarding local and individual freedoms. A federal administration has a multi-faceted architecture, with each level of government having both autonomous and joint decision-making duties.³¹ For developed governing bodies, "coming together" has been the driving framework. The "keeping together" perspective of federalism, sometimes known as "new federalism," is an effort to decentralize powers to state-local governments in order to address regional and local dissatisfaction with federal policy.³²

²⁹ 'Federalism: Political Science' (*Britannica*, 14 May 2020) <<https://www.britannica.com/topic/federalism>> accessed 19 October 2021

³⁰ *Ibid*

³¹ N.K. Singh, 'Local Public Finance and Capacity Building in Asia: Issues and Challenges' (*OECDiLibrary*, 20 January 2021) <https://www.oecd-ilibrary.org/governance/local-public-finance-and-capacity-building-in-asia_940cc5ee-en> accessed 19 October 2021

³² *Ibid*

STATUS OF ASSAM IN CONTROLLING THE PETROLEUM RESOURCES

Despite a special status being granted to Assam under the Indian Constitution, major policy control lies in the hands of the central government. Political conflicts are bound to arise, with respect to the allocation of resources and exploration of hydrocarbons in the state of Assam. With respect to Petroleum, the only state-specific legislation which has been implemented in Assam is *The Assam (Sales of Petroleum and Petroleum Products, including Motor Spirit & Lubricants) Taxation Act, 1956*.³³ This Act is not even directly related to the exploration and extraction of hydrocarbons in the state. It is a clear depiction of the failure of federalism in providing access to petroleum resources in the state of Assam. Also, the regulatory bodies and figures in place are dominated by the Centre rather than the state, despite being given a special status. One more imperative aspect depicting the conflict between the state of Assam and the federal government has been settled by the Guwahati High Court in *Oil India Ltd. v the State of Assam*.³⁴ The question arose on the validity of a 2004 amendment by the state legislature determining taxation on 'specific lands' with respect to petroleum and whether it was *ultra vires* the power of Assam's state legislature. The court solidified the position of the state legislature's right to legislate on this particular issue and dismissed the petition.

CONTEMPORARY ISSUES

More recently, Assam has been at the locus of several disputes with respect to the central government's intrusion in the state's petroleum affairs. In June of 2021, Bharatiya Janata Party-led government taking office in Assam for the second straight term, Chief Minister Himanta Biswa Sarma announced one of the largest investments in the oil industry in Assam, investing Rs 2000 crore in Numaligarh Refinery Limited ("**NRL**").³⁵ The event is significant for industrially backward states such as Assam, especially at a time when several governments are selling interests in state-run firms to raise funds for state treasuries. The destiny of NRL,

³³ The Assam (Sales of Petroleum and Petroleum Products, including Motor Spirit & Lubricants) Taxation Act, 1956

³⁴ *Oil India Ltd. v State of Assam* [2006] 1 GLR 593

³⁵ Prabin Kalita, 'Assam to invest 2,000cr, its biggest ever, in NRL' (*The Times of India*, 12 May 2021) <<https://timesofindia.indiatimes.com/city/guwahati/assam-to-invest-2000cr-its-biggest-ever-in-nrl/articleshow/82569993.cms>> accessed 31 October 2021

known as the "agreement refinery," was hanging in the balance when Bharat Petroleum Corporation Limited ("BPCL"), which held a controlling interest of 54.6 percent, was slashed as part of the National Democratic Alliance government's disinvestment program.³⁶ The Assam government, with the implicit help of OIL India, managed to keep it from falling into private hands. BPCL sold its full ownership in the Numaligarh Refinery in Assam as part of its privatization process.³⁷ For roughly Rs 9,876 crores, the privatization-bound corporation sold its interest to a coalition of Oil India Ltd, Engineers India, and the Government of Assam.

In May 2021, the Assam government turned over a check for Rs. 500 crores to OIL as a component of its expanded 26 percent stake in the NRL.³⁸ Speaking at a media briefing, Chief Minister Himanta Biswa Sarma had mentioned that the state government chose to expand its interest in the NRL from 12.5% to 26% in the 2020-21 budget plans, adding that the initial appraised value was Rs 1,400 crore, but this was progressively increased to Rs 2,150 crore.³⁹ The administration has also queued up a plethora of ventures with OIL India to create a gas infrastructure pipeline in the state's main cities, as well as a few marginal oil fields for output. While spending in the volatile oil business entails dangers, it seems that the government of Assam is ready to take that chance, and if it pays off, the state might be on the way to becoming an oil-rich economy. However, it will be a long road; Assam's refinery capacity is pitifully low in comparison to other states. In almost 20 years of operation, NRL intends to raise its refining capacity from 3 to 9 million metric tonnes per year.⁴⁰ Furthermore, the Digboi, Bongaigaon, and Guwahati refineries have a similar issue of underproduction, and massive expenditures are required to increase their capacity.

³⁶ 'BPCL exists Numaligarh Refinery Ahead of Privatization' (*The Sentinel*, 28 March 2021) <<https://www.sentinelassam.com/topheadlines/bpcl-exits-numaligarh-refinery-ahead-of-privatization-530894>> accessed 31 October 2021

³⁷ 'Oil acquires majority shares in Assam's Numaligarh Refinery Limited' (*The Hindu*, 14 April 2021) <<https://www.thehindu.com/news/national/other-states/oil-acquires-majority-shares-in-assams-numaligarh-refinery-limited/article34316602.ece>> accessed 31 October 2021

³⁸ *Ibid*

³⁹ *Ibid*

⁴⁰ 'Is Assam on its way to becoming an Oil Enrich Economy' (*GPlus*, 5 June 2021) <<https://www.guwahatiplus.com/exclusive-news/is-assam-on-its-way-to-becoming-an-oil-rich-economy>> accessed 31 October 2021

As observed from the abovementioned scenario, it seems that the central government's interest lies in the privatization of the petroleum industry in Assam, however, due to incessant backlash from the locals of the state, similar to what had happened in 2016, the central government had its hands forced to make peace with the Oil India Ltd's increase in state at NRL.⁴¹ It is pertinent to note that the SCS awarded to Assam plays little or no role in this regard because the policy-making power vests in the hands of the central government.

CONCLUSION

After a detailed analysis of the regulatory regimes prevalent in India with respect to the access to the petroleum industry of Assam, the author has come to a three-fold conclusion.

Firstly, in the context of Art. 371B and the SCS of Assam, it is imperative to note that the fundamentally flawed ecosystem of statutes does not and will not provide an exemplary getaway to Assam with respect to decisions that need to be taken for the welfare of the state.

Secondly, in the context of state and central government related primacy, the central government will always overpower the state by the virtue of the power to formulate and pass legislation, authority to form autonomous bodies free from any interference of state authorities, and powers vested into it via the constitution of India.

Finally, the only remedy which remains with the government of Assam is evident from its push to Oil India Ltd. in acquiring a majority stake in NRL in order to maintain control over hydrocarbon resources in the state. In essence, it can be concluded from this research study, that Assam, along with other states of similar nature with respect to resources, needs protection and support in terms of statutory and reformative measures to protect its resources from exploitation via private entities and thereby, grow efficiently in the long run without having to worry about a hostile takeover at the hands of its own central government.

⁴¹ Anurag Baruah, 'Why Privatization of 12 Oilfields in Assam is an Emotive Issue' (*The Quint*, 7 July 2016) <<https://www.thequint.com/voices/opinion/why-privatisation-of-12-oilfields-in-assam-is-an-emotive-issue-sarbanand-sonowal-ongc-oil-digboi-oil-refinery>> accessed 31 October 2021